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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

PATRICIA DUTTON,

Plaintiff and Appellant,

v.

RODICA MARINESCU,

Defendant and Appellant.

B298463

(Los Angeles County
Super. Ct. No. 19STRO02037)

APPEALS from an order of the Superior Court of Los Angeles County. Gary D. Roberts, Judge. Affirmed.

Law Office of D. Joshua Staub and D. Joshua Staub for Plaintiff and Appellant.

The Law Office of Cliff Dean Schneider and Tiffany Schneider for Defendant and Appellant.

SUMMARY

Plaintiff Patricia Dutton obtained an elder abuse restraining order against defendant Rodica Marinescu. The order was based on an incident in which defendant came to plaintiff's door, talking and acting in a way that frightened plaintiff. The parties became opponents in several lawsuits before this confrontation. Defendant appeals from the order, claiming lack of substantial evidence of elder abuse and error in the admission of evidence. Plaintiff appeals from the order declining to award her attorney fees.

We find no error in either order.

FACTS

Plaintiff is over 80 years old. She lives with her husband in Santa Monica. Both have significant medical issues. Plaintiff and defendant met in 2009 and became friends. The friendship ended after plaintiff and her husband lent \$427,000 to defendant and she did not repay them as promised. This led to multiple lawsuits.

On the evening of March 8, 2019, as it was getting dark, defendant came to plaintiff's house, for the first time in three years. She rang the doorbell twice. Plaintiff opened the inner door and recognized defendant; the outside security door was locked, and plaintiff knew defendant could not get in. Defendant "kept waving her hands" and repeating, "[w]e've got to talk."

Plaintiff told defendant, "[y]ou need to talk to my attorney," and "[d]o not talk to me," but defendant "just kept telling stuff and saying I needed to do this and I needed to buy this and I needed to do that, and I didn't want to talk to her and I got sweaty, and my—you know, my heart—it wasn't a good scene. I was annoyed; I was petrified of her, what she was going to do." Plaintiff "knew she couldn't get in," and "so I just said, 'Rodica, I'm tired of this trauma,' and shut the door."

Plaintiff sought an elder abuse restraining order, seeking protection for herself and her husband.

Plaintiff alleged defendant “committed financial elder abuse against James and Patricia Dutton. She is now leaving them harassing voicemail messages and coming to Patricia Dutton’s house.” She alleged she “suffered emotional distress and anxiety from seeing [defendant] at her home behaving in the manner that she did.” Plaintiff’s declaration described the incident on March 8, 2019, and stated she and her husband were “involved in litigation because [defendant] obtained \$427,000 from us with a promise to return those funds soon thereafter. She never returned those funds, and holds them wrongfully. She has caused me much grief, and she knows it. The only reason that she came to my home was to cause me distress.”

At the hearing on plaintiff’s request for a restraining order, both plaintiff and defendant testified. Defendant appeared without a lawyer; plaintiff was represented by counsel. During the hearing, in addition to testimony we have described, plaintiff’s counsel and defendant identified for the court five cases that related in one way or another to the parties or to properties in which one or both of them had or sought an interest. (Defendant insisted there were only four lawsuits; the fifth was a probate case and defendant stated that “I’m not part of that,” and “I’m not in that case. I don’t know why he [plaintiff’s counsel] mention[ed it].”)

After the testimony, a recess was taken and the trial court reviewed the court files identified by the parties. When the court returned, it granted the restraining order, first explaining the reason for its review of the files.

“[S]omething that very often happens in these proceedings—it’s not uncommon—for there to be related litigation and what tends to happen is the parties and counsel come in and they want to re-litigate, or litigate in another

[forum], the issues that are actually in their proper [forum] and I need to understand a certain amount of that[,] which is why it was helpful to me to get the information from each of you and to get the case numbers.”

The court continued by explaining that only “a very simple question” was before the court. “[T]he narrow question before me is whether, under the [statute], there has been something that transpired that would constitute elder abuse[,] and one of the definitions of elder abuse is treatment of a person resulting in physical harm or pain or other suffering and so to look at that, all I really need to do is look at that one interaction . . . at the apartment in the context of the larger litigation.”

The court stated it had reviewed the litigation history (“and there is a lot there”). The court “looked at all the documents that each of you directed me to and what I take from all of that is that when [defendant] showed up at the residence of [plaintiff], that [plaintiff], given that litigation history without deciding today who’s right or who’s wrong in that litigation, but that [plaintiff] would be in reasonable fear in light of that litigation history.”

The court then observed there was conflicting testimony about “what actually happened at the . . . security gate,” and “I find [plaintiff’s] testimony to be more credible because number one, [defendant], in spite of the fact I repeatedly asked you and making allowances for language and other things [defendant] was evasive and . . . not direct and gave me the distinct impression that she was not—that her testimony was not credible.”

Further, the court stated that the description defendant gave to him of the case files the court examined was not correct. “As an example in the probate action, [defendant] specifically told me that her conduct was not at issue in the probate action and I read the probate file and that was false. And so there’s an idea in the law that . . . if a party is not credible about something

important—and I’m giving one example of the many that I could give in reviewing the court file—that the testimony is not worthy of belief.”

The court concluded: “So on that basis, . . . I can say that I believe [plaintiff’s] characterization of the encounter at the gate. I believe that she was in reasonable apprehension of what was going to transpire, in light of all the litigation context here and I believe that she did suffer pain or other mental anguish as a result of that interaction and that’s all I need in order to issue [an] elder abuse restraining order.”

When defendant protested the ruling, the court observed: “It’s clear to me. I could give you a number of examples. You repeatedly misrepresented the litigation in, I think, every one of these in terms of what’s going on. So I was giving you a very specific example because I thought that was a clear one.” Defendant continued protesting, and the trial court ended by saying defendant was “playing games and that’s exactly the kind of . . . evasiveness that made me find that your testimony was not credible today. And to be clear, that wasn’t the only basis.”

The court declined to award attorney fees to plaintiff, stating: “So in terms of the attorney’s fees, I’m denying the request for attorney’s fees. I’m denying them without prejudice to those being sought in other actions where they might be sought but that does not feel like an appropriate step for me to take in this proceeding today.”

The court’s restraining order was served on the parties at the hearing on April 18, 2019. Defendant appealed and plaintiff filed a cross-appeal.

DISCUSSION

1. Defendant’s Appeal

Defendant contends there was no substantial evidence of an act of elder abuse, and the court erroneously considered

privileged conduct and improper character evidence. We disagree.

The Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.) allows an elder who has suffered abuse to seek protective orders. (§ 15657.03, subd. (a)(1).) (Statutory citations are to the Welfare and Institutions Code unless otherwise specified.) Abuse is defined to include “[p]hysical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.” (§ 15610.07, subd. (a)(1).)

Defendant says her conduct “simply does not rise to the level of ‘other treatment with resulting . . . mental suffering.’” Defendant appears to believe that because there was a steel door separating plaintiff and defendant, and she did not try to force it open, her conduct could not have resulted in mental suffering. Defendant offers no authority to support that position, and it is obviously not correct.

The trial court’s conclusion was supported by substantial evidence, which we have already recited and will not repeat. Defendant does not give a full presentation of the facts, omitting, for example, plaintiff’s testimony she was “petrified of [defendant], what she was going to do.” The trial court properly found defendant was not a credible witness and properly concluded that plaintiff “was in reasonable apprehension of what was going to transpire, in light of all the litigation context here,” and that plaintiff suffered mental anguish “as a result of that interaction.”

Nor need we dwell on defendant’s assertion the restraining order violated her First Amendment rights because it was “based on [her] speech alone.” Her premise is wrong; the restraining order was based on her conduct and its consequences. Defendant cites no authorities supporting the proposition that an elder abuse restraining order on the facts here violates the First

Amendment. There is likewise no merit to defendant's claim her conduct was privileged under Civil Code section 47, subdivision (b) (defining a "privileged publication or broadcast"). Defendant misunderstands privileged communications. Conduct that causes reasonable apprehension and results in "physical harm or pain or mental suffering" to an elder adult (§ 15610.07, subd. (a)(1)) is elder abuse, whether or not defendant engaged in that conduct because she wanted to talk about pending litigation. Defendant cites no legal authorities that suggest otherwise.

Defendant also contends the trial court considered improper character evidence (Evid. Code, § 1101) when it reviewed pleadings in other court files that involved defendant. Defendant asserts the trial court considered her "conduct alleged in other litigation to find that [her] conduct [in this case] was abuse." Further, defendant says the court took judicial notice of court records in cases where she or plaintiff or both were not parties, and that the statements in the court records were inadmissible hearsay. These claims are incorrect, too.

We have described in detail what the trial court did and why, as clearly reflected in the transcript of the hearing. The court did not err. It did not consider the truth of any matter in the court records, or consider defendant's "conduct alleged in other litigation" to prove her conduct in this case. There is no basis for defendant's claims of hearsay and improper character evidence. The court merely used the records in those cases to understand the background of the matter before it ("without deciding today who's right or who's wrong in that litigation"). And those records also revealed that defendant had mischaracterized a probate case in which she and plaintiff were not parties, telling the court her conduct was not at issue in that case when it was very much at issue. That is not "relying on hearsay" to "cast doubt on [defendant's] credibility." Defendant did that herself by failing to be candid with the court.

2. Plaintiff's Appeal

In an action brought to obtain a protective order for an elder adult who has suffered abuse, “[t]he prevailing party . . . may be awarded court costs and attorney’s fees, if any.” (§ 15657.03, subd. (t).) The court denied plaintiff’s request for attorney fees, saying “that does not feel like an appropriate step for me to take in this proceeding today.”

Plaintiff contends her entitlement to legal fees is a legal issue we review de novo. That is incorrect. The award of legal fees in protective order cases is a matter of the court’s discretion (the prevailing party “may be awarded” attorney fees (§ 15657.03, subd. (t))). The cases plaintiff cites are inapt. They involve statutes that require the court to award fees, where the question is whether the criteria for a fee award have been met; or cases involving contractual attorney fees; or other legal issues. (E.g., *Sanders v. Lawson* (2008) 164 Cal.App.4th 434, 438.) This is not such a case. Our review is for abuse of discretion, and we see none.

Plaintiff tells us it is “unsound” to deny her attorney fees simply because “there is other litigation between the parties.” That is not what the trial court did. The court simply observed that its denial was “without prejudice to those being sought in other actions.” We do not understand the court to have said that plaintiff could recover the fees incurred in this action in the other cases pending between the parties; we understand the court to have stated its view that an award of fees was not appropriate for the protective order proceedings.

Next, plaintiff tells us the court failed to exercise its discretion (which itself is an abuse of discretion), because it did not determine which party was the prevailing party. Obviously, plaintiff was the prevailing party, and the court was not obliged to state the obvious. Then plaintiff tells us the court “did not consider the appropriate factors” when it denied fees, but cites

factors that apply to determining the amount of attorney fees to be awarded. None of the legal authorities plaintiff cites is apt. Plaintiff has not demonstrated an abuse of discretion.

DISPOSITION

The orders are affirmed. The parties shall bear their own costs.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

SALTER, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.